

commitment to follow ANSI-like procedures does not entirely eliminate the potential for BOC manipulation of standards in a manner that favors its manufacturing affiliate, the use of such procedures would make discrimination in this area less likely and easier to detect.

With regard to the scope of the term "standards," for purposes of Section 272(c)(1), TIA believes that this term should be construed to encompass all activities undertaken in connection with a BOC's efforts to establish technical specifications for BOC network operation, the interconnection of equipment and services to the BOC's network, and the BOC's own procurement of "goods" or "services,"⁹⁶ defined in a manner consistent with the recommendations made by TIA in Section V.A.1. above.

are open, transparent, and nondiscriminatory.

A requirement that BOCs use ANSI-style procedures would be consistent with other provisions of the 1996 Act, in particular, the requirements of Section 273(d), which mandates the use of an ANSI-like procedure for "industry-wide" standards development work undertaken by non-accredited entities, including Bellcore. See 47 U.S.C. § 273(d)(4).

⁹⁶ The latter category would include generic requirements developed by or for a BOC, which describe acceptable product attributes for use by the BOCs or their affiliates in establishing product specifications for the purchase of "goods" and related "services."

For purposes of Section 272(c)(1), the term "standards" would thus include all standards and generic requirements developed by a BOC or BOC affiliates, e.g., Bellcore, including an individual BOC's application of Bellcore standards or generic requirements in its creation of technical specifications for its network.

B. Section 272(e)(1) [NPRM Section II.D.; Paragraphs 80-85]

Section 272(e)(1) provides that "[a BOC] and an affiliate that is subject to the requirements of Section 251(c) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates."⁹⁷ In its Notice, the Commission tentatively concludes that the phrase "an unaffiliated entity" should be construed to include "any entity, regardless of line of business, that is not affiliated with a BOC. . . ." ⁹⁸ TIA agrees with the Commission that the language of Section 272(e)(1) should be interpreted in a manner which ensures that **any** "unaffiliated entity" seeking to purchase service from a BOC for its own use or for resale, including equipment vendors, will be treated in a non-discriminatory manner.

VI. ENFORCEMENT OF SECTION 272 [NPRM Section VII.A.; Paragraphs 94-96]

A. Mechanisms to Facilitate Enforcement [NPRM Section VII.A.; Paragraph 94]

The Commission's Notice observes that "[e]nforcement of the statutory separate affiliate and nondiscrimination safeguards established by Sections 271 and 272 and the rules that we may

⁹⁷ 47 U.S.C. § 272(e)(1).

⁹⁸ NPRM, Paragraph 82.

adopt to implement those provisions will be critical in ensuring the full development of competition in the local and interexchange telecommunications markets."⁹⁹ While this passage in the Notice does not specifically mention manufacturing, clearly effective enforcement of the Section 272 safeguards is also critical to the maintenance of a competitive equipment marketplace, once the BOCs are permitted to manufacture.

Accordingly, TIA urges the Commission to make every effort to ensure that there are mechanisms in place "to facilitate the detection and adjudication of violations" of the manufacturing-related safeguards established pursuant to Section 272, as well as Section 273 of the Act. As the discussion above indicates, TIA believes that the BOCs should be required to establish concrete procedures implementing the non-discrimination requirements of Section 272(c)(1) in the area of procurement. The establishment of Commission-approved procedures should make it easier for the Commission and private parties to ascertain whether a BOC is conducting its procurement activities in a manner consistent with its obligations under Section 272(c)(1) and other equipment-related provisions of the Act.¹⁰⁰

⁹⁹ NPRM, Paragraph 94.

¹⁰⁰ See e.g., Section 273(e).

B. Reporting/Monitoring Requirements [NPRM Section VII.A.; Paragraph 95-96]

The Notice specifically invites comment on whether the Commission should "impose reporting requirements on BOCs analogous to those requirements imposed by our CEI plans and ONA plans under Computer III."¹⁰¹ TIA believes that reporting, monitoring, auditing, and complaint procedures need to be established to ensure compliance with the non-discrimination requirements of Section 272, in particular, as they relate to BOC manufacturing activities. These procedures are critically important. If they are inadequate, the safeguards will be rendered ineffective. While adoption of reporting requirements similar to those adopted in Computer III would be helpful in ensuring that the BOCs conduct their service provisioning activities in a non-discriminatory manner, such provisions do not address the areas of greatest concern to manufacturers.

For example, in the area of procurement, TIA believes that the BOCs should be required to provide regular reports to the Commission concerning its procurement of goods and services. BOC reporting obligations should include a requirement that each BOC provide a consolidated report to the Commission, in an approved format, detailing its level of purchases from affiliated and non-affiliated suppliers in appropriately-disaggregated

¹⁰¹ NPRM, Paragraph 95.

product categories.¹⁰² In addition, the Commission must establish rules to ensure compliance by the BOCs with the Section 272(c)(5) requirement that all transactions between a BOC and its separate affiliate must be "reduced to writing and available for public inspection."¹⁰³

The Commission should take further steps to ensure that it has available sufficient transaction-specific data to ascertain whether a BOC has complied with the non-discrimination requirements of Section 272(c)(1) and other relevant provisions, as well as its Commission-approved procurement compliance plans. In this regard, the Commission should have or be able to readily obtain the volume of a particular purchase, the price of the purchase, the nature of the purchased products/services, the selected supplier, and relevant information with regard to proposals made by other prospective suppliers.¹⁰⁴ Before collecting such data, the Commission should take steps to ensure that it has adequate procedures in place providing for confidential treatment of commercially sensitive information. To the extent that the Commission determines not to require that all such data be reported on a regular basis, appropriate record retention requirements should be put in place in order to ensure

¹⁰² See discussion of the need to establish an appropriate product classification scheme at Section V.A.1., supra.

¹⁰³ 47 U.S.C. § 272(b)(5).

¹⁰⁴ With such data, the Commission can construct a mechanism for comparing BOC purchases from affiliated versus unaffiliated entities.

that the information necessary to investigate complaints and to conduct audits of BOC procurement activities is preserved for a reasonable period.

In addition to the above-described reporting/monitoring mechanisms, the Commission also should make aggressive use of audits to ferret out problems. In addition to the biannual audits required pursuant to Section 272(d), the Commission should conduct spot examinations of BOC purchasing records and reserve the right to investigate on a more comprehensive basis, where it has a reasonable basis to suspect discrimination.

In enforcing the provisions of Section 272 and 273, as they relate to BOC manufacturing, the Commission should make full use of its existing authority under Sections 206-209 of the Communications Act, as well as the supplemental authority granted under Sections 273(f) and (g) of the Act.¹⁰⁵ These and other relevant provisions of the Communications Act,¹⁰⁶ should provide ample authority for the establishment and implementation the reporting/monitoring mechanisms described above, which are essential to achieving the statutory goal of preventing anticompetitive cross-subsidy and discrimination.

¹⁰⁵ See 47 U.S.C. § 273(f)-(g).

¹⁰⁶ See e.g., 47 U.S.C. § 215, 218.

VII. CONCLUSION

TIA urges the Commission to take action to preserve the benefits of the vigorously competitive domestic equipment marketplace which exists today, by adopting appropriate rules implementing the structural separation and non-discrimination requirements of Section 272, in a manner consistent with the foregoing comments.

Respectfully submitted,


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